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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,458	02/18/2004	Floyd Backes	160-052	1742

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EXAMINER	
PHILPOTT, JUSTIN M	

ART UNIT	PAPER NUMBER
2665	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/781,458	BACKES ET AL.	
	Examiner	Art Unit	
	Justin M Philpott	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20041028*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the brief description does not include figures 8A, 8B, 18A, 18B, 33A and 33B. Accordingly, "Figure 8" (page 3) should be replaced with "Figures 8A and 8B"; "Figure 18" (page 4) should be replaced with "Figures 18A and 18B"; and "Figure 33" (page 6) should be replaced with "Figures 33A and 33B". Appropriate correction is required.

Claim Objections

2. Claims 1 and 4 are objected to because of the following informalities: "network; logic" (claim 1, lines 7-8) should be replaced with "network; and logic"; "the parameter" (claim 4, line 1) should be replaced with "a parameter". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. US 2004/0054767 A1 by Karaoguz et al.

Regarding claim 1, Karaoguz teaches an apparatus for use in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), comprising: logic for keeping track of one or more parameters related to stations in the network (e.g., gathering and storing statistical information such as location and identity information of the wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g., 115) based upon the one or more parameters (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information).

Regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement).

Regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see paragraph 0024).

Regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

Regarding claim 5, Karaoguz teaches at least some of the one or more parameters are stored in a table (e.g., see paragraph 0040 regarding the information being stored in a data memory unit within the access point, inherently comprising a table).

Regarding claim 6, as discussed above regarding claims 1-4, Karaoguz teaches a program product for use in an access point (e.g., access point 115, see FIG. 1) in a wireless communications environment (e.g., wireless network 110) including multiple access points (e.g., see paragraphs 0019-0021 regarding a plurality of access points) and stations (e.g., wireless devices 120a-120n), wherein stations (e.g., 120a-120n) gain network access by associating with one or more of the access points (e.g., 115), comprising: logic for keeping track of one or more parameters related to stations in the network (e.g., gathering and storing statistical information such as location and identity information of the wireless devices 120-120n, power levels, channel cycling, frequencies, coverage area, traffic patterns, etc., see paragraph 0024); and logic for causing a station (e.g., 120a-120n) to become associated with the access point (e.g., 115) based upon the one or more parameters (e.g., see paragraph 0045 regarding modifying the network to achieve optimized network configuration based upon the location information and

statistical information; see also paragraph 0021 regarding a wireless devices receiving coverage from an access point in the geographic area upon the access point powering on, and paragraph 0028 regarding adjusting transmission power levels for optimal network configuration for continued coverage in accordance with the stored information). Further, as discussed above regarding claim 2, Karaoguz teaches logic for receiving messages from stations, wherein the messages include at least some of the one or more parameters (e.g., see paragraphs 0029-0038 regarding determining device location, and specifically paragraph 0036 regarding the wireless device sending a range message acknowledgement). Still further, as discussed above regarding claim 3, Karaoguz teaches a parameter is the number of stations associated with the access point (e.g., inherently represented by the identity information of each wireless device associated with the access point, see paragraph 0024). Finally, as discussed above regarding claim 4, Karaoguz teaches a parameter is the distance of a station (e.g., wireless device 120a-120n) from the access point (e.g., 115) (e.g., see paragraphs 0029-0038, and specifically paragraph 0029 regarding determining a distance range location information of a wireless device).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

6. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

7. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/780,595. Although the conflicting claims are not identical, they are not patentably distinct from each other because each recites logic performing identical functions.

9. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Application Publication No. US 2004/0066759 A1 by Molteni et al. discloses a method for a wireless station to determine network metrics prior to associating with an access point of a wireless network; U.S. Patent Application Publication No. US2004/0160908 A1 by Perlman discloses a method of operation for a three-dimensional wireless network; and U.S. Patent No. 6,801,777 to Rusch discloses a device and method for intelligent wireless communication selection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on 571.272.3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Justin M Philpott

ALPUS H. HSU
PRIMARY EXAMINER